

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PATRICIA SMITH, ADMINSTRATRIX	:	
OF THE ESTATE OF MARTHA E.	:	CIVIL ACTION
SMITH; PATRICIA SMITH; MARY J.	:	
SCOTT,	:	NO. 08-05689
Plaintiffs,	:	
	:	
v.	:	
	:	
ALBERT EINSTEIN MEDICAL CENTER;	:	
<u>ET AL.</u> ,	:	
Defendants.	:	

Order

AND NOW on this 12th day of August 2009, upon consideration of defendants' motions to dismiss (Doc. Nos. 72, 73, 75-82), plaintiffs' response thereto, and the reply from defendant Stump, **IT IS HEREBY ORDERED** that:

1. Defendants' motions to dismiss plaintiffs' amended complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) are **DENIED**;
2. Defendants' motions to dismiss plaintiffs' amended complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) are **GRANTED** as to plaintiffs' claims of violations of civil rights and plaintiffs' claims under the Emergency Medical Transfer and Active Labor Act ("EMTALA"), 42 U.S.C. § 1395dd (2006), and these claims are **DISMISSED** with prejudice;
3. Pursuant to 28 U.S.C. § 1367(c)(3), the court will decline to exercise supplemental jurisdiction over plaintiffs' remaining claims for state law medical and legal malpractice and fraud, and these claims are **DISMISSED** without prejudice to the right of plaintiffs to proceed in an appropriate state court on these

state law claims; and

4. Defendants' remaining motions to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(5) and Pennsylvania Rule of Civil Procedure 1042.3 and defendants' motions for a more definite statement pursuant to Federal Rule of Civil Procedure 12(e) are **DISMISSED** as moot.

/s/ William H. Yohn Jr., Judge
William H. Yohn Jr., Judge